

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CIV 08-938 BB/RHS

1963 BEECHCRAFT BONANZA AIRCRAFT  
(Serial No. D-7293),

Defendant,

and

LAWRENCE RUNKE and  
MICHAEL JOSEPH KEARNS,

Claimants.

MEMORANDUM OPINION  
SUPPORTING DISMISSAL OF COUNTERCLAIM

THIS MATTER is before the Court on the Motion [doc. 13] of Plaintiff United States of America to dismiss Claimant Kearns' Counterclaim [doc. 9].

DISCUSSION

On June 12, 2008, Drug Enforcement Administration ("DEA") Special Agent Terence Epp executed a federal seizure warrant on the Defendant 1963 Beechcraft Bonanza Aircraft. On October 9, 2008, Plaintiff United States of America filed a complaint *in rem* seeking forfeiture of the aircraft. Claimant Michael Joseph Kearns

filed a “Verified Answer” to the complaint on November 17, 2008, followed by a “Verified Claim” on December 10, 2008.

**On March 20, 2009, Claimant Kearns filed a pleading entitled “Counterclaim.” Counterclaimant seeks monetary damages in the amount of \$1,000 per day against the United States and DEA Special Agent Epp and return of the aircraft based upon the agent’s investigation of this case and seizure of the aircraft.**

**Pursuant to FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) and 12(b)(6), Plaintiff now moves for dismissal of the counterclaim. Plaintiff argues that counterclaims are not permitted in *in rem* civil forfeiture actions and the United States has not waived its sovereign immunity with regard to the counterclaim asserted against it. Therefore, it follows this Court lacks subject matter jurisdiction.**

**Counterclaimant failed to respond to Plaintiff’s motion and is therefore deemed to have consented to the granting of the motion. D.N.M.LR-Civ. 7.1. More significantly, Plaintiff is correct on the law. Forfeiture is a unique *in rem* proceeding governed by special rules outside the general Federal Rules of Civil Procedure. *Via Mat Int’l South America Ltd. v. United States*, 446 F.3d 1258, 1264 (11th Cir. 2006); *see generally* Charles Allan Wright, Arthur R. Miller, and Richard Marcus, 12 FED. PRAC. & PROC. CIV. 2D § 3223. Under these procedures, the parties asserting ownership of the property are allowed to contest the government’s forfeiture, but there is no legal authorization for a counterclaim against the sovereign. *United States v. \$10,000 in United States Funds*, 863**

**F. Supp. 812, 816 (S.D. Ill. 1994), aff'd, 52 F.3d 329 (7th Cir. 1995); United States v. One Volvo 2-Door Sedan, 393 F. Supp. 843, 847 (C.D. Cal. 1975); United States v. Assorted Computer Equipment, 2004 WL 78449 at \*2 (W.D. Tenn.). Plaintiff's motion is therefore proper under Federal Rule of Civil Procedure 12. David v. City & County of Denver, 101 F.3d 1344, 1352 (10th Cir. 1996).**

**The counterclaim filed by Claimant Michael Joseph Kearns will be Dismissed.**



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**BRUCE D. BLACK**  
**United States District Judge**